THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

Under Section 42 of Insolvency & Bankruptcy Code, 2016 and Rule 11 of NCLT Rules.

IVN.P 21 OF 2025

Bank of India

...**Applicant**

V/s

Mr. Girish Siriram Juneja

…**Respondents**

AND

I.A. 4943 OF 2024

Employees Provident Fund Organisation, Nashik

...**Applicant**

V/s

Mr. Girish Siriram Juneja

…**Respondents**

In the matter of

C.P.(IB) No. 1587/MB/2019

IDBI Bank Ltd

…**Financial Creditor**

Vs.

Pawar Electro Systems Pvt. Ltd.

…Corporate Debtor

Order delivered on: 07.03.2025

***Coram**:*

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Karan Kapoor a/w Adv. M. Mathews i/b Roy Sing Adv. Deepak Panpaliya i/b Aqua Legal
For Respondent	:	Adv. Jahnvi Pandey i/b Link Legal

ORDER

IA 4943/2024

1. This is an Application filed under Section 42 of Insolvency and Bankruptcy Code, 2016 r/w 11 of NCLT Rules, 2016 and seeking following relief:

   a. *This Tribunal be pleased to direct Respondent no. 1 to admit the entire claim amounting to Rs. 7,33,82,101/- as filed by the Applicant in its Annexure A dated 28.10.2023;*

   b. *This Tribunal be pleased to direct the Respondent No. 1 to release the aforesaid outstanding provident fund dues in favor of the Applicant; and*

   c. *Pass any other order or directions as deemed fit in the facts and circumstances of the present matter.*

2. The present Interlocutory Application has been filed by the Regional Provident Fund Commissioner-I, Nashik, working as Regional Provident Fund Commissioner-I at EPFO, Regional Office, Nashik, a statutory body ("Applicant"), seeking directions to the Liquidator ("Respondent No. 1") of Pawar Electro Systems Pvt. Ltd., the Corporate

Debtor, ("Respondent No. 2") for admission of the entire provident fund dues amounting to Rs. 7,33,82,101/- (Rupees Seven Crores Thirty-Three Lakhs Eighty-Two Thousand One Hundred and One only), as submitted by the Applicant in Annexure A dated 23.10.2023.

DUE	PERIOD	AMOUNT	DOCUMETS
Dues of Provident Fund	10/2015 to 10/2019	2,41,20,619/-	7 A order No 770 dated 22/07/2021 RRC No 66 dated 20/04/2022
Damages u/s 14-B	04/2015 to 11l/2018	1,35,887/-	148 order dated 27/04/2019 RRC No 48 dated 27/04/2020
Interest u/s 7-Q	04/2015 to 11/2018	70,050/-	7Q order dated 27/04/2019 RRC No 48 dated 27/04/2020
Damages u/s 14-B	10/2015 to 10/2019	2,41,20,619/-	Order dated 23/10/2023
Interest u/s 7-Q	10/2015 to 10/2019	2,44,48,395/-	Order dated 23/10/2023
Cost charges		486531/-	
Total		7,33,82,101/-	

3. It is case of the Applicant that an amount of Rs. 7,33,82,101/- was determined to be payable by Respondent No. 2 / Corporate Debtor towards provident fund and allied dues. As such, the statutory dues of Rs. 7,33,82,101/- have not been paid in full which is in contravention of settled law that provident fund dues being a statutory liability of the Corporate Debtor cannot be escaped and are to be given priority over all other creditors during the liquidation process. Hence, being aggrieved by the illegal, arbitrary, unfair, unjust action/inaction of the Corporate Debtor, this Interlocutory Application has been filed seeking directions to the Corporate Debtor to pay the entire provident fund dues of Rs. 7,33,82,101/- as adjudged by the Applicant.

<u>IVN.P 21/2025</u>

4. The Bank of India on behalf of secure Financial Creditors of the Corporate Debtor has filed present Intervention Application in IA 4943 of 2024 stating that the claim of EPFO Department is heavily barred by time prescribed under Section 42 of IBC. It is further stated that liquidation process was already completed by Liquidator on 26.04.2024 after handing over the sale certificate entitle documents to the Successful Bidder and distribution of proceeds to the respective Creditors including EPFO Department. The Bank of India has sought following reliefs:

    a. To pass appropriate order(s) for directing the respondent No. I to add the Applicant as party in IA No 4943 OF 2024;

    b. To pass an order dismissing the Interlocutory application filed by the Respondent No. l

    c. To pass such other order(s) as the Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

5. It is further stated that the EPFO Department had filed their claim for Rs.2,48,13,087/- on 28th April 2023 in the liquidation process of the Corporate Debtor, out of which Rs.24120619/- were determined as payable in priority and the remaining Rs.6,92,468/- were classified as unsecured operational debt. Thereafter the EPFO Department filed a revised claim of Rs.7,33,82,101/- on 23.10.2023, however the revised claim was rejected by the Liquidator on 02.01.2024. Further the Liquidator has distributed a sum of Rs.2,41,20,619/- to the EPFO on 10.04.2024.

<u>Findings and decision</u>

6. Heard learned Counsel and perused the material on record.

7. IA 4943 is filed on 14.10.2024 in terms of Section 60(5) of IB Code against the decision of the Liquidator in rejecting the revised claim of the Applicant for the full

amount of Rs.7,33,82,101/-. Undisputedly, the Applicant EPFO Department has claimed further sum of Rs.4,85,69,014/- in terms of order dated 23.10.2023 determining interest under Section 7Q for the period 10/2015 to 10/2019 and damages under Section 14(b) for the same period. It is this claim which is in dispute in the present Application. The Applicant was duly informed by the Liquidator on 31.10.2023 enclosing thereto minutes of the 2nd meeting of SCC held on 26.01.2023, wherein the EPFO Department was represented by Anil Kumar Pritam. The said minutes records as under:

> *The EPFO did not inform NCLT that they have already filed a claim for Rs 2.48 Cr with the Liquidator and chose to file a revised claim for Rs. 7,33,82,101 /-. The Liquidator submitted that considering the provisions of TBC and the Liquidation regulations, the last date to file the claim was 24.05.2023. The original claim was filed well within timeline and liquidator had also accept the claim in full Further as per section 38(5) of IBC, 2016, the claimant can either withdraw or modify its claim within 14 days of submission of their cla1m. The Liquidator submitted that since the last date to revise the claim has lapsed and hence he will not be in a position to accept the revised claim. Further, the Hon 'ble NCLT has given the directions to EPFO to file the claim with the liquidator, which EPFO had already filed for Rs. 2,48, 13,087 /-. The Liquidator informed that basis the facts available it seems that the department has prepared a claim only on the basis of the Annual Financial accounts of Corporate debtor and do not have any provided any details of the employees for whom they are claiming this amount of Rs 2.48 Cr. Liquidator stated that he is unable to understand what the EPFO will do with the money that they are claiming from the Corporate debtor in the absence of the details of the employees to whom the amount pertains. Nonetheless he will still consult the same internally and revert to EPFO department on their revised claim.*

8. The Applicant EPFO Department vide its letter dated 29.04.2023 responding to email dated 31.10.2023 explained that "*In this regard it is to state that this office had filed claim of Rs 2,48,13,087 /- on 28/04/2023. While filing claim it was already mentioned that damages under section 14B and interest under section 7Q of EPF &, MP Act, 1952 will be calculated as and when the dues are recovered and will be intimated separately. While filing revised claim dated 23/10/2023 of Rs 7,33,82,101/- EPFO has also informed the damages u/s 14B and Interest u/s 7Q*". The Liquidator vide letter dated 09.05.2024 informed to the EPFO Department that, "*I refer to my email dated 02.01.2024 in terms whereof had communicated the belated claim having been rejected*" and further informed that

> "*You initially submitted your claim for Rs. 2,48,13,087/- on 28.04.2023. Thereafter, you have submitted a revised claim for Rs. 7,33,82,101/- on 23.10.2023 i.e. from 178 days from its submission. It was informed to you vide our email dated 02.01.2024 that on account of the aforementioned provisions and the discussion held in SCC meetings, the revised claim of Rs. 7,33,82, 101/- cannot be accepted as the same is filed after the timeline as prescribed in IBC. Your admitted claim of Rs. 2,48, 13,087 /- shall be considered and distributed in the following manner:*
>
> > *a. The principal amount of the Claim of Rs. 2,41,20,619/- shall be paid in priority*
> >
> > *b. The balance amount of Rs.6,92,468/- shall be classified as unsecured operational debt and shall be treated as per Section 53 of IBC, 2016*.".

9. These communications clearly evidence that the revised claim of the Applicant EPFO was rejected on 02.01.2024 in clear terms as being inadmissible on account of it having been filed beyond the last date for filing of the claim; the original claim of the Applicant was admitted; and the revised claim is arising from two orders passed on 23.10.2023 which is after the liquidation commencement date. The

Applicant had a remedy in the form of Appeal in terms of Section 42 of the Code specifically providing for an Appeal within 14 days of the receipt of the decision of the Liquidator rejecting or admitting the claim of the Creditor. Undisputedly, this remedy was not availed by the Liquidator herein. Since there is a specific provision providing for appeal, this Tribunal cannot have jurisdiction in terms of Section 60(5) of the Code. Nonetheless it is trite law that the claims of the Creditor in existence as on the liquidation commencement date are only admissible and such claims has to be filed within the time period allowed by the Liquidator in terms of public announcement made after commencement of the Liquidation or such period as is extended thereafter. In the present case even, the revised claim has not been filed within the time prescribed by the Liquidator for filing of claim.

10. In view of the above we do not find any merit in the prayer of the Applicant EPFO Department and **dismiss the IA 4943 of 2024**. The Intervention Application No. 21 of 2025 stands **allowed**. Both these applications are **disposed of accordingly**.

-Sd/-	**-Sd/-**
PRABHAT KUMAR	**JUSTICE V.G. BISHT**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rehan Shaikh

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 59

IA 481/2025 IN CP. (IB)/1587(MB)2019

CORAM:

SH. PRABHAT KUMAR **JUSTICE VIRENDRASINGH BISHT (Retd.)**
HON'BLE MEMBER (TECHNICAL) **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **07.03.2025**

NAME OF THE PARTIES: IDBI BANK LTD V/s PAWAR ELECTRO SYSTEMS PVT LTD

Section 7, 42 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 481/2025 IN CP. (IB)/1587(MB)2019

2. Mr. Aditya Sikka a/w Ms. Onshi Jakhar and Mr. Digvijay Singh for the Union of India, Ld. Counsel for the present through VC.
3. This is an application by PAWAR ELECTRO SYSTEMS PRIVATE LIMITED under Section 11 of the Insolvency and Bankruptcy Code, 2016, seeking following reliefs.

   a. *The Hon'ble Tribunal may be pleased to declare closure of the Liquidation process of the Corporate Debtor and be pleased to pass the appropriate order/directions to order the closure of the liquidation of the Corporate Debtor i.e. M/s Pawar Electro Systems Pvt Ltd under*

Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016, since the corporate debtor is sold as a going concern.

b. To direct the lenders viz. Authum Investment & Infrastructure Limited (Formerly known as Reliance Commercial Finance Ltd) and Mahindra & Mahindra Financial Services Limited to issue the NoC.

c. To condone the delay in filing the present application, if any

d. *To pass any such orders may deem fit by this Hon'ble Tribunal.*

4. It is submitted that the Company Petition No. 1587 of 2019 ("Company Petition") was filed by IDBI Bank Limited (Financial Creditor) under Section 7 of the IBC, 2016 against the Corporate Debtor which came to be admitted on 06/09/2019 and the Applicant was appointed as the Interim Resolution Professional ("IRP"). The Committee of Creditors ("CoC") had decided to liquidate the Corporate Debtor. This Tribunal passed an e order dated l3/04/2023 to liquidate the Corporate Debtor and appointed the applicant herein (erstwhile Resolution Professional of Corporate Debtor) as liquidator.

5. It is submitted that in compliance of the Regulation 34 of the IBBI (Liquidation Process) Regulations, 2016, the Preliminary Report and the Asset Memorandum basis valuation done during the CIRP period was prepared and submitted before this Hon'ble Authority within 75 days from the liquidation commencement date. The same was taken on record by this Tribunal vide order dated 14.07.2023

6. It is submitted that to sell the Corporate Debtor as going concern under Regulation 32 A of the IBBI (Liquidation Process) Regulations, 2016, 1st E-Auction notice was published in Times of India (English) Nashik, Gavkari (Marathi) Nashik, Financial Express (English) Mumbai and Navakal (Marathi) Mumbai, keeping the reserve price of Rs. 13,15,00,000/-. The Earnest Money Deposit (EMD) amount was 10% of the reserve price, i.e. Rs. l,31,50,000/- However, no EMD was received and therefore the auction had failed. Further, the applicant, in order to sell the Corporate Debtor as a going concern, the applicant again published in the 2nd Auction Notice, keeping the reserve price as Rs. 12,50,00,000/-.

7. It is submitted that M/s Marken Enterprises Private Limited was declared as the successful bidder for the Corporate Debtor as it was sold as a going concern under Regulation 32A of the IBBI (Liquidation Process) Regulations, 2016 at the Reserve Price.

8. It is submitted that M/s Marken Enterprises Private Limited preferred an application bearing IA No. 1999/2024 seeking reliefs and concessions under Section 60(5) of the IBC Code, 2016 before this Tribunal and the said IA was allowed by this Tribunal.

9. It is submitted that the applicant on the basis the undertaking received, the applicant had released the sale proceeds to the stakeholders as per Section 53 of IBC, 2016 and prepared the compliance certificate as per Regulation 45(3) of the IBBI (Liquidation Process) Regulations, 2016.

10. Th Liquidator has placed the Final Report dated 16.12.2024 along with the closure application pursuance to Section 60(5) of the IBC Code, 2016 read with Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016, explaining how the liquidation process was conducted by the liquidator and assets and funds were distributed.

11. The Applicant submits that after making distribution, the Bank Account has an amount of Rs. 24,17,498.39/- which is kept as contingency towards any litigations in the Provident Fund matter and any other necessary expense. The said contingency was approved by the secured financial creditors and the undertaking was accordingly issued by the secured financial creditors.

12. It is pertinent to note that Regulation 46(2) of Liquidation Process Regulations contemplates that a Liquidator shall be deposit the undistributed proceeds, if any, in Liquidation Process into the Corporate Liquidation account before filing of an application under Regulation 45(3) as provide in Regulation 46(1). Further Regulation 46(7) enables a stakeholder, who is entitled to the amount deposited in such account, to apply to the board in form J for an order for withdrawal of the amount.

13. In the present case, some amount is retained as undistributed to meet out the claim of EPFO Department, which is subject matter of an appeal before Hon’ble NCLAT, and other contingencies, if any. We are of considered view that such amount ought to have been deposited in the manner provided in Regulation 46 before in Liquidation Process can be declared has been closed. Accordingly, we are of considered view that the present application under Regulation 45(3) can be allowed only after the undistributed amount is deposited in terms of Regulation 46.

14. List this matter on 08.04.2025 for further consideration.

Sd/-	**Sd/-**
PRABHAT KUMAR	**JUSTICE VIRENDRASINGH BISHT**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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